

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 209

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO THE NATIONAL FORESTS; DECLARING A STATE OF
EMERGENCY WITHIN THE NATIONAL FORESTS OF NEW MEXICO; REQUIRING
THE GOVERNOR AND THE ATTORNEY GENERAL TO TAKE CERTAIN ACTIONS
TO ELIMINATE THE EMERGENCY; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. FINDINGS--DECLARATION OF EMERGENCY--GOVERNOR--
ATTORNEY GENERAL-- ADDITIONAL DUTIES. --

A. The legislature finds that:

(1) in 16 U.S.C. §§ 1001, the Watershed
Protection and Flood Prevention Act, the United States congress
found that "erosion, floodwater and sediment damages in the
watersheds of U.S. rivers and streams cause loss of life and
damage to property, threatening the national welfare. The
sense of Congress is that the federal government should

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1 cooperate with states and political subdivisions, soil and
2 water conservation districts, flood prevention or control
3 districts, and other local public agencies to: prevent this
4 damage; further the conservation, development, use and disposal
5 of water; further the conservation and use of land"; the goal
6 being to preserve, protect and improve United States land and
7 water resources and quality of the environment;

8 (2) a state of emergency exists in New Mexico
9 due to a shortage, and ever diminishing total supply, of water
10 available to its citizens, communities, livestock, wildlife and
11 wildlife habitats;

12 (3) New Mexico communities that have been
13 seriously threatened or impacted by a shortage of available
14 water within the last calendar year include Albuquerque, Santa
15 Fe, Las Vegas, Farmington, Bloomfield, Aztec, Rio Rancho,
16 Bernalillo, Edgewood, Alamogordo, Ruidoso, Roswell and
17 Carriozo;

18 (4) New Mexico waterways that have experienced
19 a significant depletion of available water include the Rio
20 Grande and the Pecos, Gila and Animas rivers, as well as the
21 streams and tributaries that contribute water to those rivers;

22 (5) New Mexico livestock and wildlife that are
23 now or are likely to be directly or indirectly seriously
24 imperiled by a shortage of available water include cattle,
25 sheep, elk, deer, antelope, black bears, spotted owls, shiners,

1 trout and silvery minnows;

2 (6) because of the state of emergency, it is
3 imperative that New Mexico promptly take actions necessary to
4 restore and increase the total supply of water available within
5 the state;

6 (7) the state's total supply of water is
7 significantly dependent upon watersheds located on forested
8 lands. To achieve an increase in the total supply of water in
9 New Mexico, it is imperative for the state to take all
10 necessary actions that may be available to remedy the current
11 deteriorated conditions of these watersheds;

12 (8) Section 4-36-11 NMSA 1978, enacted in
13 2001, acknowledges the deteriorating conditions of New Mexico's
14 forests;

15 (9) the United States congress expressly
16 provided in 16 USCA 475 that "No national forest shall be
17 established, except to improve and protect the forest within
18 the boundaries, or for the purpose of securing favorable
19 conditions of waterflows" and reaffirmed this directive in the
20 Multiple-Use Sustained-Yield Act of 1960 when it provided that
21 the national forests "shall be administered for watershed
22 purposes";

23 (10) the United States supreme court, in
24 *United States v. New Mexico*, 438 U.S. 696 (1978), stated that
25 "Congress has evidenced its continuing concern with enhancing

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1 the water supply for non-forest use by specifically authorizing
2 the president to set aside and protect national forest lands
3 needed as sources of municipal water supplies". In that same
4 case, the supreme court also stated that it was the belief of
5 congress that "the states had exclusive control of the
6 distribution of water on public lands and reservations";

7 (11) New Mexico's watersheds located on
8 federal lands currently contain at least one billion excess
9 junipers and conifers, each of which consumes at least ten
10 gallons of water each day, which results in, at a minimum, ten
11 billion gallons of water consumed every day;

12 (12) the continued existence of the overgrowth
13 serves no legitimate federal or state purpose and poses a
14 present unreasonable risk to the lives and property of New
15 Mexico citizens;

16 (13) the failure to remove the excess tree
17 overgrowth from New Mexico's watersheds prevents downstream
18 flow to New Mexico in violation of the state's legal
19 entitlement to the diverted waters under both state and federal
20 law;

21 (14) New Mexico has a legal entitlement to the
22 waterflows that are or may be derived from watersheds within
23 the state;

24 (15) the excessive overgrowth on the
25 watersheds is depriving the state of its legal entitlement to

1 water, in direct violation of the mandates of the United States
2 congress and the rulings of the United States supreme court;
3 and

4 (16) to abate the diversion of New Mexico's
5 water, to increase the total supply of water available in New
6 Mexico in the future and to remedy the state of emergency, New
7 Mexico should affirm and assert the supremacy of its right to
8 the ownership and use of the water that is currently being
9 diverted to supply the demands of forest overgrowth on New
10 Mexico's watersheds.

11 B. The legislature declares that:

12 (1) a state of emergency exists due to a
13 shortage of available water, caused in significant part by the
14 deteriorating conditions of the state's watersheds;

15 (2) the deteriorating conditions are due to
16 excessive forest overgrowth that is diverting New Mexico's
17 waterflows and depleting New Mexico's total supply of water
18 available to its citizens, communities, livestock, wildlife and
19 wildlife habitats;

20 (3) the continued existence of the state of
21 emergency poses a direct threat to the health, safety, well-
22 being and economic viability of New Mexico's citizens and to
23 the continued health and viability of its communities,
24 livestock, wildlife and wildlife habitats; and

25 (4) it is imperative that New Mexico take such

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1 actions as may be necessary and appropriate to mitigate or
2 eliminate the deteriorating conditions of the state's
3 watersheds, including:

4 (a) obtaining a transfer to the state of
5 such limited jurisdiction over federal lands as may be
6 necessary to enable the state to restore the watersheds to a
7 condition of health and to maximize waterflows within New
8 Mexico; and

9 (b) upon the transfer of the limited
10 jurisdiction, garner the public and private resources and
11 services needed to mitigate and ultimately eliminate the state
12 of emergency.

13 C. The governor, pursuant to the provisions of
14 state or federal law:

15 (1) shall cooperate with the United States
16 secretaries of agriculture and the interior to achieve
17 consistency between New Mexico water laws, policies and plans
18 to restore and maintain water delivery from the watersheds; and

19 (2) if, by October 1, 2003, the governor finds
20 that the United States secretaries of agriculture and the
21 interior are not cooperating with the state to achieve that
22 consistency, the governor shall request, pursuant to Section
23 19-2-2 NMSA 1978 and 7 USCA 2268, from the United States
24 secretaries of agriculture and the interior the transfer of
25 such limited jurisdiction over relevant federal lands as may be

1 necessary for New Mexico to restore its watersheds to a
2 condition of health and thereby increase the waterflows that
3 may be derived from the watersheds. The request to the United
4 States secretaries of agriculture and the interior for the
5 transfer of the limited jurisdiction shall include an express
6 provision that an acceptance of the limited jurisdiction by New
7 Mexico is conditioned on New Mexico's receipt of sufficient
8 federal funds determined by New Mexico to be necessary to
9 enable the state to perform the actions needed to eliminate the
10 state of emergency created by the federal government's
11 impairment of New Mexico's watersheds, waterflows and total
12 water supply.

13 D. If, within ninety days after the request made
14 pursuant to this section, the United States secretaries of
15 agriculture and the interior have not taken significant actions
16 toward compliance with the request, the attorney general shall
17 prepare and pursue a lawsuit on behalf of New Mexico to:

18 (1) obtain a judicial declaration of New
19 Mexico's right to the waterflows originating from watersheds
20 located on national forest lands;

21 (2) obtain a judicial declaration of the
22 impairment of the state's rights to waterflows originating on
23 federal lands as a foreseeable consequence of excessive
24 vegetative growth; and

25 (3) compel the United States secretaries of

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1 agriculture and the interior to take such actions as may be
2 determined by the court to be necessary to eliminate the state
3 of emergency.

4 Section 2. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.